

SAMPLE PETITION FOR RESTRICTING ACCESS TO
C FELONY CONVICTION RECORDS (EXPUNGEMENT)
UNDER I.C. 35-38-9-4

This Sample Petition was created jointly by the Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center and is intended to be an example of the information that should be included in a Petition filed under I.C. 35-38-9-4. This form may be subject to change.

The procedure to seal or expunge records under I.C. 35-38-9 is extremely complex, has not yet been fully litigated and contains severe consequences if mistakes are made. The Indiana Supreme Court Division of State Court Administration and the Indiana Judicial Center strongly recommend that you seek legal advice from an attorney before filing a petition on your own especially if you are seeking to seal or expunge more than one record.

INSTRUCTIONS FOR CLERKS AND COURTS

1. This form should be used for any felony conviction other than:
 - A. An elected official convicted of an offense while serving the official's term or as a candidate for public office;
 - B. A sex or violent offender (as defined in I.C. 11-8-8-5);
 - C. A person convicted of:
 1. a felony that resulted in serious bodily injury to another person;
 2. Official Misconduct (I.C. 35-44.1-1-1);
 3. Homicide Crimes in addition to those in I.C. 11-8-8-5 (I.C. 35-42-1)
 4. Human and Sexual Trafficking Crimes in addition to those in I.C. 11-8-8-5 (I.C. 35-42-3.5), and
 5. Sex Crimes in addition to those in I.C. 11-8-8-5 (I.C. 35-42-4).
2. Petitioner should complete the petition in its entirety.
3. The petitioner needs to choose between alternatives (indicated by an **[OR]**) in paragraphs 2, 8 and 9. The petitioner should choose the alternative that best describes his/her situation and delete or redact the other choices. Do not include more than one paragraph option for any numbered paragraph in the Verified Petition.
4. Paragraph 11 is optional. It is the Petitioner's decision whether to share additional information with the Court.
5. Waiting Period:
At least eight (8) years after the date of completion of the Petitioner's sentence unless the Prosecuting Attorney consents in writing to an earlier period. The Petitioner must indicate that the Prosecuting Attorney has given this written consent in paragraph 8 and a copy of the written consent must be attached to this petition as an exhibit.
6. Case Type:
The petition should be filed in a MI – miscellaneous civil case.

7. Filing Fees:
Regular civil filing fees are required by the statute.
8. Where Petition should be filed:
By statute, the petition should be filed in the sentencing court.
9. Notice to Prosecutor:
The petitioner must serve a copy of the petition on the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.
10. Response from Prosecutor:
The prosecuting attorney shall respond to the petition not less than 30 days after receipt.
11. Victim Notification:
The prosecuting attorney shall promptly forward a copy of the petition to the last known address of the victim and inform the victim of the victim's right to be present and address the court.
12. Burden of Proof to be met by the Petitioner:
The petitioner must prove his/her petition by clear and convincing evidence.
13. Hearing:
If the prosecuting attorney does not object, the court may grant the petition without a hearing. If the prosecuting attorney does object, the court shall set the matter for hearing not sooner than sixty (60) days after service of the petition on the prosecuting attorney.
14. Court Discretion with finding:
The court may summarily deny a petition if the petition does not meet the requirements of I.C. 35-38-9-8 or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.
15. Lifetime Limit:
A petitioner may file only one (1) petition for expungement during the petitioner's lifetime. All petitions for expungement filed in separate counties for offenses committed in those counties count as one (1) petition if they are filed in one (1) three hundred sixty-five (365) day period. The only exception to the lifetime limit is if the petitioner's petition was denied on its merits. See I.C. 35-38-9-9(i) and I.C. 35-38-9-9(j).
16. Result if Petition is Granted:
As used in the statutes, "expunged" means restricting access to or restricting the use of the person's records. If the petition to expunge is granted, the court records and other public records relating to the arrest, conviction, or sentence will be clearly and visibly marked or identified as expunged however **they remain public records and will remain on public access.** (I.C. 35-38-9-7(b)). The state police department, the BMV and any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction or sentence in the criminal history data base stating that the record is marked as expunged. (I.C. 35-38-9-7(c)).
17. Result of Petition is Denied:
 - A. The petitioner may appeal the court's decision or
 - B. if the original petition is denied, in whole or in part, the petitioner must wait at least three (3) years to file a subsequent petition that pertains to the convictions listed in the original denied

petition. A subsequent petition for expungement may not include any conviction that was not included in the initial expungement petition.

18. Multiple Convictions:

A petitioner may petition to expunge more than one conviction (but not arrest) at a time. The convictions must be consolidated by county and the petitioner must file a petition in each county in which a conviction was entered. The petitioner is given a 365 day “window” to file all petitions for expungement of convictions (not arrests). See Indiana Code 35-38-9-9(h) and (i). The sample petition provides space for only one conviction. When appropriate, the petitioner may amend the sample petition to accommodate requests to expunge multiple convictions.

19. The Petitioner may wish to provide additional attachments and include them with the Verified Petition; however, these are not required. Attachments may include:

- Criminal history for Indiana: Updated to date of filing of the petition
- Criminal history for other venues if Verified Petition states residency in other States: Updated to date of filing of the petition
- Indiana Driving Record from the Bureau of Motor Vehicles: Updated to date of filing of the petition
- Out of State Driving Record for out of State BMVs if Verified Petition states residency in other States: Updated to date of filing of the petition
- Official documents from Probation, Community Corrections, and/or Indiana Parole that pertain to the successful completion of probation, community corrections and/or parole or Official documents from Probation, Community Corrections and/ or Indiana Parole that state that records regarding the successful completion of their programs no longer exist.
- Official documentation from out of state probation, parole and/or community corrections if the Petitioner was convicted in another state.

STATE OF INDIANA) IN THE _____ COURT
) SS:
 COUNTY OF _____) CAUSE NO. _____
)
 IN RE: THE MATTER OF THE PETITION) *This will be opened as an MI case*
 TO RESTRICT DISCLOSURE OF RECORDS)
)
)
 _____,)
 Petitioner.)

VERIFIED PETITION TO RESTRICT DISCLOSURE OF FELONY CONVICTION RECORDS
(EXPUNGEMENT)
I.C. 35-38-9-4

Petitioner, _____, by counsel/pro se, respectfully moves the Court to restrict disclosure of Petitioner's felony conviction records pursuant to I.C. 35-38-9-4. The relevant conviction cause number(s) is/are _____, and the case(s) is/are captioned State of Indiana vs. _____.

Petitioner affirms under the penalties of perjury:

1. Petitioner's full name is _____.
2. Petitioner has no other legal names or aliases by which Petitioner is or has been known.

[OR]

2. Petitioner has had other legal names and/or aliases by which Petitioner is or has been known and they are: _____.
3. Petitioner's date of birth is _____.
4. Petitioner's addresses from the date of the offense/first offense to the date of this Verified Petition are/ have been (list most current address first):

_____;
 _____;
 _____.

5. There are no current criminal investigations or charges pending against Petitioner.
6. Petitioner has not committed a crime within the past eight (8) years, and has not been convicted of a crime within the past eight (8) years. Further, there exist no pending

suspensions or current suspensions of Petitioner's driving privileges.

7. Petitioner has been convicted of the following offenses (list all convictions):

_____ Offense	_____ Date
_____ Offense	_____ Date
_____ Offense	_____ Date

8. At least eight (8) years have elapsed since the completion of Petitioner's sentence, which include the completion of any term of supervised release and the satisfaction of all other obligations placed on Petitioner as part of the sentence.

[OR]

8. The Prosecuting Attorney has provided written consent for a shorter elapsed time period, which is evidenced as an exhibit to this Verified Petition for Restricted Access.

9. Petitioner has filed no other petitions under I.C. 35-38-9.

[OR]

9. Petitioner has filed other petitions under I.C. 35-38-9 to seal records or expunge convictions; specifically, a petition filed in _____ County, Indiana, under cause number

_____ on the _____ day of _____, 20_____.

10. Petitioner has successfully completed all terms of the sentence(s) previously imposed for the conviction(s) for which restricted access is sought, including the payment of restitution, fines, and court costs; and completion of any terms of probation, parole, or community corrections.

11. **[Optional]** Petitioner wishes to provide the following information to assist the Court:

12. The case(s) that Petitioner is requesting be sealed has/has not been appealed. If the answer is affirmative, please provide the caption and date of filing of appellate case(s):

13. Petitioner has served a copy of this Verified Petition to Restrict Disclosure of Conviction Records upon the Prosecuting Attorney in accordance with the Indiana Rules of Trial Procedure.

WHEREFORE, Petitioner respectfully requests this Court to restrict access to/seal records contained in:

- (1) the Court's files;
- (2) the files of the department of correction;
- (3) the files of the bureau of motor vehicles; and
- (4) the files of these entities who provided treatment or services to Petitioner under a court order:

Name: _____

Address: _____

Name: _____

Address: _____

that relate to the Petitioner's felony conviction(s), and all other relief that is just and proper. I affirm under the penalty of perjury that the foregoing representations are true.

Respectfully Submitted,

[Signature of Petitioner]

Name of Petitioner

CERTIFICATE OF SERVICE

I certify that on the ____ day of _____, 20__, a true and complete copy of this Verified Petition to Restrict Access to Conviction Records was served on the following by first class, United States mail, postage prepaid by other means provided in Indiana Trial Rule 6E, specifically _____.

State of Indiana: _____, Prosecuting Attorney